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**IN THE  
COURT OF APPEALS OF INDIANA**

CHARLES A. WALKER,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 46A05-0612-CR-717

APPEAL FROM THE LaPORTE SUPERIOR COURT  
The Honorable Kathleen B. Lang, Judge  
Cause No. 46D01-0512-FB-162

**August 24, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Charles A. Walker appeals his conviction for Robbery,<sup>1</sup> as a class B felony. He also appeals his sentence, which was enhanced upon his adjudication as a Habitual Offender.<sup>2</sup> Walker presents the following restated issues for review:

1. Did the State present sufficient evidence to support the robbery conviction?
2. Is Walker's sentence of forty years in prison inappropriate?

We affirm.

The facts favorable to the verdict follow. On November 29, 2005, Russell Folino received a telephone call from the Franklin Bar and Grill (the bar) in LaPorte County indicating that he had won a raffle prize of \$730. Folino was a regular at the bar. His girlfriend drove him there around 6:00 that evening, and he collected his winnings in open view. There were roughly thirty or forty people in the bar that Tuesday evening. Folino placed all but about \$100 of the money in his wallet, which he kept in his back pocket. With the remaining money, Folino began buying drinks for himself and his friends. Folino, who was very joyous about his winnings, was warned by the bartender and a friend to be more careful with the money.

Walker arrived at the bar alone around 7:00. While inside the bar, he wore a large winter jacket with a fur-rimmed hood. Walker roamed the bar but at times was in close proximity to Folino. Timothy Malott, a friend of Folino's, became nervous when Walker

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<sup>1</sup> Ind. Code Ann. § 35-42-5-1 (West 2004).

<sup>2</sup> Ind. Code Ann. § 35-50-2-8 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

moved in close and “seemed to be eyeballing [Folino’s] wallet.” *Transcript* at 96. Malott nudged Folino and warned, “Hey, man, be cool with that wallet open. We don’t know all these people.” *Id.* at 97. Folino agreed and put his wallet back in his pocket.

Around 7:30, Folino went into the empty men’s restroom, followed soon by Walker. As Folino was at the urinal, a man entered and struck him in the head multiple times from behind. The heavy blows caused Folino to collapse to one knee. Folino pushed the man against the sink, and then the man fell on top of Folino. As the two struggled on the ground, the man reached “straight for [Folino’s] back pocket” and took his wallet. *Id.* at 36. The man then kicked Folino and ran out the bathroom door. Folino could not identify his attacker. Folino, however, indicated that the man wore a big parka with “fur edging” around the hood, which was pulled down over his face. *Id.* at 37.

Others in the bar heard the commotion coming from inside the bathroom. Soon thereafter, Walker ran out of the bathroom and out of the bar, knocking down chairs along his way. He was wearing his coat with the hood up. Malott testified that he could “definitely” tell it was Walker who ran by him and out of the bar. *Id.* at 104. Folino exited the bathroom disoriented and badly beaten. He exclaimed, “That guy just stole my wallet.” *Id.* at 106.

About two weeks later, Walker was arrested and he voluntarily gave a statement to a detective. Walker admitted being at the bar on the night in question. Walker stated that he was using the bathroom when an intoxicated Folino walked in and proceeded to accidentally urinate on Walker’s shoe. Walker alleged that Folino then directed a racial slur at him. As a result, Walker admittedly struck Folino at least twice in the face,

causing Folino to fall to the ground. Walker, however, denied robbing Folino and explained that when the incident was over he (Walker) simply walked out of the bathroom and exited the bar.

Following a jury trial, Walker was convicted of robbing Folino. He was also adjudicated a habitual offender. The trial court subsequently imposed a sentence of twenty years in prison for the robbery conviction, enhanced by twenty years for being a habitual offender. Walker now appeals.

1.

Walker initially challenges the sufficiency of the evidence supporting his robbery conviction. In this regard, he notes that Folino could not identify the robber, no witness saw Walker with the wallet, and Walker's fingerprints were not found on the wallet.<sup>3</sup> Further, Walker claims he gave an explanation for his presence in the bathroom and for his battery of Folino.

Our standard of review for claims challenging the sufficiency of the evidence is well settled. We will not reweigh the evidence or judge witness credibility, and we will respect the fact finder's exclusive province to weigh conflicting evidence. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). Considering only the evidence and the reasonable inferences supporting the conviction, our task is to decide whether there is substantial evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

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<sup>3</sup> The day after the robbery, the wallet was found not far from the bar on the side of a road with the prize money missing.

We reject Walker's blatant invitation for us to reweigh the evidence. Contrary to the version of events given to police by Walker, the evidence favorable to the conviction clearly reveals that Walker followed Folino into the bathroom, beat him, took his wallet, and then ran from the bathroom and out the bar. Therefore, Walker's sufficiency challenge fails.

2.

Walker also challenges the enhanced sentence he received. In sum, he argues there was nothing about the robbery that "stood apart from any other robbery" and "although Walker has an extensive criminal history, Walker has struggled throughout his life with various [mental] conditions." *Appellant's Brief* at 10.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. An appellant has the burden of persuading us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

Here, Walker has not convinced us that his sentence is inappropriate in light of the nature of his offense and his character. While the nature of the offense may not have been particularly egregious (that is, compared to the average class B felony robbery), Walker's character is extremely aggravating. Although the trial court recognized

Walker's limited intellectual functioning, it found this mitigating circumstance outweighed by Walker's extensive criminal history. Specifically, the court found:

Number one, the defendant has a lengthy criminal background; number two, he has engaged in a most continuous pattern of criminal activities for the last thirty years and has been incarcerated for much of his adult life. Number three, he has accumulated various [prior] felonies including burglary, robbery and dealing in cocaine, as well as numerous misdemeanor offenses. Number four, his criminal history shows a complete disdain for the rules of law that govern our society.

*Sentencing Transcript* at 14. In light of the serious nature of Walker's criminal history, we do not find that his forty-year aggregate sentence is inappropriate.<sup>4</sup>

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.

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<sup>4</sup> Appended to his inappropriateness argument, Walker asserts that the habitual offender enhancement should be vacated because the trial court improperly treated the habitual offender adjudication as a separate crime and ordered that sentence to be served consecutive to the robbery sentence. Walker is correct that the habitual offender statute does not establish a separate crime but provides only for enhancement of the sentence for the underlying felony conviction. *See Johnson v. State*, 490 N.E.2d 333, 335 (Ind. 1986). While the trial court did not use the correct terminology in sentencing Walker, the effect was the same (i.e., he received a forty-year sentence). Walker's argument that the twenty-year enhancement for being a habitual offender should be *vacated* because of this technical error is not supported by his cited authority and is entirely without merit.